SUPREME COURT, U. S.
73-509

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In the

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-059

IN THE MATTER OF JOHN McCANDISH KING,
Debtor in Proceedings for an Arrangement,

IN THE MATTER OF KING RESOURCES COMPANY AND INTERNATIONAL RESOURCES LIMITED, Debtors
in Proceedings for Reorganization of Corporations,

JOHN M. KING,

Petitioner,

v.

CHARLES A. BAER, Trustee,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY OF PETITIONER TO BRIEF OF RESPONDENT CHARLES A. BAER, TRUSTEE, IN OPPOSITION

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ARGUMENT

At the risk of belaboring the obvious, petitioner John M. King ("King") wishes to point out that the Brief in Opposition of the respondent Trustee of King Resources Company ("KRC") admits the very proposition it seeks to deny and

thereby concedes, albeit unintentionally, that the decisions of the courts below are in conflict with those in other circuits and present questions which are extremely significant in the administration of bankruptcy law.

In his Brief in Opposition (pp. 7-10), the Trustee argues that it could not be the case that the courts below divested King's title to his interest in the permits because they determined that King had no title to divest.[1] But the conflict presented by the decisions below is founded on the assumption by the KRC reorganization court of summary jurisdiction to make *any* determination of King's title to the interest, when it was not established that the court has possession of the interest or that King's claim thereto is no more than merely colorable. Restated in terms of the real issue in this case, the Trustee's reasoning amounts to this: the KRC reorganization court did not assume summary jurisdiction to determine King's title because it determined that King had no title. In other words, the Trustee implies, a determination of "no title" is not a determination of title. But, of course, this last proposition is incorrect and the reverse thereof is true: A determination of "no title" *is* a determination of title.

Thus, by the Trustee's own admission, the KRC reorganization court did assume summary jurisdiction to determine King's title. As the opinions below make manifest, jurisdiction to make this determination was not and could not be based on posses-

[1]In this form, the argument is a classic example of the fallacy of *petitio principii* (BLACK'S LAW DICTIONARY 1302 [4th ed. rev. 1968]) in its most acute manifestation. Not only is the premise "King acquired no title" dubious and want proving, but it is the very point in issue.

sion of the interest by the KRC reorganization court[2] or on a finding that King's claim is merely colorable[3]; jurisdiction is asserted and affirmed squarely and solely on the ground that the contract under which King claims is executory. The conflict with the holding of *In re American National Trust*, 426 F. 2d 1059 (7th Cir. 1970), is direct. This unprecedented extension of summary jurisdiction represents an upheaval in bankruptcy law of incalculable consequence. If the summary jurisdiction of a bankruptcy court is not limited to property either in its possession or subject to merely colorable adverse claims, where does it end? The answer to that question is of major importance.

By not replying herein to other arguments made in the respondent Trustee's Brief in Opposition, King does not intend to waive the other issues presented in his Petition for a Writ of Certiori. Rather, he feels that the Trustee's other arguments go to the merits of the issues rather than to reasons for allowing or denying the writ and accentuate the need for a review of those issues by this Court.

CONCLUSION

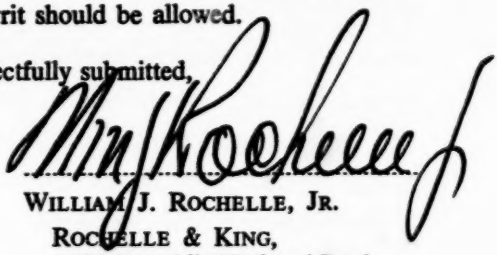
For the reasons set forth in this petitioner's Petition for a

[2]The opinion of the United States Court of Appeals for the Tenth Circuit does not mention "possession". The KRC reorganization judge adverts only to "possessory rights," a concept entirely distinct from and unrelated to "possession" in the sense pertinent to bankruptcy court summary jurisdiction. See petitioner's Petition for a Writ of Certiorari, p. 16 n. 1.

[3]Neither the Court of Appeals nor the KRC reorganization court considered the concept of a "merely colorable claim" and the case law thereunder. Neither the opinions nor the entire record give any indication that the doctrine could apply in this case.

Writ of Certiorari to The United States Court of Appeals for the Tenth Circuit, such writ should be allowed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of this Reply to Brief in Opposition have been served upon each party in accordance with the provisions of paragraph 1 of Rule 33, Revised Rules of the Supreme Court of the United States, by depositing such copies in the United States post office, airmail postage prepaid, this 30 day of October, 1973, addressed to counsel of record for each party at the post office address of each such counsel, as follows:

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